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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,941	07/17/2003	Peter Gingras	14188-002001	1557
26161 7590 09/21/2009 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
SWEET, THOMAS				
ART UNIT		PAPER NUMBER		
3774				
NOTIFICATION DATE		DELIVERY MODE		
09/21/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/621,941

Applicant(s)

GINGRAS, PETER

Examiner

Thomas J. Sweet

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-23, 25 and 85 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 15-23, 25 and 85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

The restriction requirement of 6/22/09 has been withdrawn.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/14/2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-10, 12, 15-23, 25 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pacetti et al (US 6355058) in view of Mano et al (US Re. 31618). Pacetti et al discloses a non-woven soft tissue implant (stent, fig 1) comprising a porous biocompatible film (16, fig. 2) having a plurality of cells (as shown in fig. 1), a thickness of less than about 0.015 inches (col 4, lines 24-27), and a surface area ratio less than 1.5 (inherent, as clearly seen in fig. 1, plus its expandable to much smaller ratio), wherein the biocompatible film (16) comprises one or more films (film-a thin layer or coating) of polymer or copolymer. However, Pacetti et al

remains silent (states “codrawn” but doesn’t specifically mention extruding) as to the polymer or copolymer having biaxially oriented chains. Mano et al teaches another non-woven soft tissue implant which is extruded and stretched to form a biaxially oriented tube (col 3, line 1-25) for the purpose of strengthening the tube. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an extruded and stretched biaxially oriented tube as taught by Mano et al as the stent material of Pacetti et al in order to strengthen the material.

Regarding claims 9 and 10, The non-woven soft tissue implant of claim 1, wherein one or more of the cells in the plurality of cells has a diameter, measured along the longest axis of the cell, of about 10 microns to about 10,000 microns. (“There is no inherent limitation on the stent's diameter or length, and as such will be dependent upon a particular application for the stent.”, col 7, lines 39-41, given a typical stent diameter of $\frac{1}{2}$ inch or less meets this claim based on the drawings. Note- precise proportions are not being used in this rejection).

Regarding claim 12, fully expanded the cells are rectangular so the cells are essentially rectangular at any expansion.

Regarding claim 15, 25 micron equates to about 0.001 inches.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pacetti et al (US 6355058) in view of Mano et al (US Re. 31618) as applied to claim 9 above and in further view of Wulfman et al (US 20030139802) . Pacetti et al as modified disclosed a non-woven soft tissue implant as discussed above. However, Pacetti et al does not disclose one or more of the cells in the plurality of cells has a diameter, measured along the longest axis of the cell, of about 50 microns to about 100 microns. Wulfman et al teaches another a non-woven soft tissue implant including cells less than about 100 microns (14, claim 8, encompassing 50 microns to 100

microns) for the purpose of reinforcing the structure as a critical point. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a cell size of less than 100 microns (including 50-100) as taught by Wulfman et al on the stent material of Pacetti et al in order to reinforcing the structure as a critical point.

Allowable Subject Matter

The indicated allowability of claim 11 is withdrawn in view of the newly discovered reference(s) to Wulfman et al. The current and previous changes to the independent claim changes the limitations on claim 11 required a new search.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the enclosed 892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/
Primary Examiner, Art Unit 3774